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9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 **RYAN TUTTLE,**

14 Plaintiff,

15 v.

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17 **RICHARDSON'S BAY REGIONAL
AGENCY, ET AL.**

18 Defendants.
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3:21-cv-03019-CRB

**INTERVENOR CALIFORNIA
ATTORNEY GENERAL ROB BONTA'S
NOTICE OF MOTION AND MOTION
TO DISMISS; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT**

[Related Case: *Kelly v. Richardson's Bay
Regional Agency et al*, Case No. 20-cv-06791
CRB]

Date: October 15, 2021
Time: 10:00 a.m.
Dept: Courtroom 6
Judge: Hon. Charles R. Breyer
Trial Date: Not Scheduled
Action Filed: April 26, 2021

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1 **NOTICE OF MOTION**

2 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

3 **PLEASE TAKE NOTICE** that on October 15, 2021, at 10:00 am, in Courtroom 6, 17th
4 Floor, of the above-entitled Court, located at 450 Golden Gate Avenue, San Francisco, CA 94102,
5 or as soon thereafter as may be heard, Intervenor Rob Bonta, Attorney General of California, will
6 move for an order dismissing the fourth cause of action in Plaintiff Ryan Tuttle's Complaint for
7 Damages and Injunctive Relief under Federal Rule of Civil Procedure 12(b)(6) for failure to state
8 a claim.

9 Specifically, Plaintiff's fourth cause of action does not state a claim for a violation of a
10 constitutional right on which relief can be granted, as Plaintiff's due-process rights under the
11 United States and California Constitutions have been satisfied upon Plaintiff's receipt of adequate
12 notice of the pending seizure of his property, which allowed Plaintiff adequate time to respond
13 and object to that notice prior to seizure.

14 The motion is based on this Notice of Motion and Motion, the attached Memorandum of
15 Points and Authorities, the pleadings and records on file with the Court in this action, and such
16 other evidence that the Court may consider at the hearing of this motion.

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **INTRODUCTION**

19 Plaintiff Ryan Tuttle, the apparent owner of the marine vessel "Trident," seeks injunctive
20 relief and monetary damages against Defendants Curtis Havel and Richardson's Bay Regional
21 Agency for the seizure and destruction of Tuttle's vessel. In the fourth cause of action in Tuttle's
22 complaint, he alleges that California Harbors and Navigation Code sections 550 and 551 violate
23 his due-process rights under the United States and California Constitutions. The State enacted
24 these statutes to protect beaches, waterways, and marine resources from the threats posed by
25 loose debris. Harbors and Navigation Code sections 550 and 551 empower State and local
26 governmental agencies to remove wrecks, hulks, and other parts of ships that are no longer truly
27 vessels. But these agencies can only do so after conspicuous public posting and written notice to
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1 identified owners. Given that requisite notice, these laws do not violate either the United States
2 or California Constitutions.

3 Tuttle alleges that Harbors and Navigation Code sections 550 and 551 violate “due process
4 requirements by not providing for a hearing.” But these laws allow the State to seize and remove
5 marine debris only after owners have been provided reasonable notice. Both the United States
6 and California Supreme Courts have found that a forfeiture statute that requires notice before
7 property is seized satisfies the Fourteenth Amendment’s procedural due-process protections, as
8 such notice implies a right to be heard.

9 Because Tuttle’s challenge is legally unviable, his fourth cause of action fails to state a
10 claim on which relief can be granted, and the Court should dismiss it.

11 BACKGROUND

12 Tuttle alleges that he “was the owner, bareboat charterer or otherwise was the owner *pro*
13 *hac vice*” of a vessel named the “Trident.” (Compl. ¶ 7.) This vessel allegedly was “seaworthy
14 or was reasonably fit or capable of being made fit” for use as a marine vessel. (*Id.*) Tuttle further
15 alleges that Defendant Richardson’s Bay Regional Agency (RBRA) enacted ordinances allowing
16 the removal of unseaworthy vessels, which ordinances “employed” the language of California
17 Harbors and Navigation Code sections 550 and 551. (*Id.* ¶ 29.)

18 California’s Legislature added Harbors and Navigation Code sections 550 and 551 in
19 2016.¹ Section 550 defines the various terms used throughout Chapter 3, Article 3 of the Code.
20 Section 550(b) defines “marine debris” as “a vessel ... including a derelict, wreck, hulk, or part of
21 any ship ... or dilapidated vessel, that is unseaworthy and not reasonably fit or capable of being
22 made fit to be used as a means of transportation by water.”

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25 ¹ Sections 550 and 551 were added to the code under Assembly Bill (AB) 1323. Before
26 AB 1323’s passage, the California’s Public Resources Code had allowed the California State
27 Lands Commission to remove derelict vessels “by immediate action, without notice, if the vessel
28 pose[d] a significant threat to public health, safety, or welfare or to sensitive habitat, wildlife, or
water quality, or that constitute[d] a public nuisance.” Cal. Bill Analysis, A.B. 1323 Assem.,
Apr. 27, 2015. Thereafter, after a 30-day notice period, the vessel could be destroyed. *Id.* Among
other things, AB 1323 gave local governments authority—following adequate notice—to remove
derelict vessels from their waterways.

1 Section 551 allows the State and other governmental agencies to remove from public
2 waters, beaches, and tidelands any “object [that] meets the definition of marine debris ... and has
3 no value or a value that does not exceed the cost of removal and disposal.” Cal. Harb. & Nav.
4 Code § 551(a)(1)(A). An agency may do so subject to several conditions. First, if the marine
5 debris or object bears a “discernable registration, hull identification number, or other
6 identification insignia, a notice is attached to [it] ... and sent to the owner, if known, at the
7 owner’s address of record with the Department of Motor Vehicles, by certified or first-class
8 mail.” Cal. Harb. & Nav. Code § 551(a)(1)(C). Second, whether or not there is discernable
9 registration or identification, “a peace officer or authorized public employee securely attaches a
10 notice stating that the marine debris shall be removed by the public agency if not claimed or
11 removed within 10 days.” Cal. Harb. & Nav. Code §§ 551(a)(1)(B), (a)(1)(C). Third, the posted
12 notice must bear the name, address and telephone number of the agency providing it, and the
13 marine debris must “remain[] in place for 10 days from the date of attaching the notice ... or from
14 the date the notice letter was sent, whichever is later, before being removed.” Cal. Harb. & Nav.
15 Code §§ 551(a)(1)(D), (a)(2)(A). Fourth, any mailed notice must contain this same information,
16 along with a warning that the debris will be disposed of after ten days, with an explanation of the
17 methods to claim or recover the debris before disposal. Cal. Harb. & Nav. Code § 551(a)(2)(B).

18 Tuttle concedes that sections 550 and 551 provided RBRA “with another statutory tool to
19 control” the condition of Richardson’s Bay. (Compl. ¶ 30.) But Tuttle asserts that RBRA
20 “ignored the definition of ‘marine debris’ found in [section] 550(b),” and that Defendants RBRA
21 and Curtis Havel have applied RBRA’s “own definition of what property was subject to [section]
22 551, which definition was much broader and impermissibly vague.” (*Id.* ¶¶ 32-33.)

23 Tuttle alleges that on March 10, 2021, Defendant Havel seized his vessel and had it towed
24 to the Army Corps of Engineers dock in Sausalito. (Comp. ¶ 48.) Tuttle further asserts that the
25 vessel was “seaworthy and/or capable of being made fit for transport,” and “thus did not meet the
26 definition of ‘marine debris’ in [section] 550(b)” or “the mandatory criteria in [section] 551(b).”
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1 *Id.* ¶¶ 48-50.)² In his fourth cause of action, Tuttle states—as an “alternate pleading”—that if
2 Defendants “contend that [section 551 does] not require a post-seizure holding period, then the
3 statutory scheme deprives [Plaintiff] of procedural due process in that the statutory scheme denies
4 him the opportunity to a hearing on the issue of whether [his vessel] was marine debris.” (*Id.* ¶
5 79.)

6 Tuttle thereafter filed a “Notice That Constitutionality of a State Statute Is Questioned,”
7 questioning the constitutionality of Harbors and Navigation Code sections 550 and 551. The
8 Court granted the California Attorney General’s motion under Federal Rule of Civil Procedure
9 5.1(b) to intervene and defend these statutes on July 13, 2021. (ECF No. 27.)

10 STANDARD OF REVIEW

11 Failure to state a claim upon which relief can be granted provides grounds for dismissal.
12 Fed. R. Civ. P. 12(b)(6). Dismissal is proper where there is either a “lack of cognizable legal
13 theory” or “the absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v.*
14 *Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990) (citing *Robertson v. Dean Witter*
15 *Reynolds, Inc.*, 749 F.2d 530, 533–34 (9th Cir. 1984)).

16 On a motion to dismiss under Rule 12(b)(6), the court treats all factual allegations in the
17 complaint as true and construes the pleadings in the light most favorable to the nonmoving party.
18 *Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005). The court, however, need not accept as
19 true unreasonable inferences or conclusory allegations cast in the form of factual allegations.
20 *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981).

21 As shown below, Tuttle’s fourth cause of action—whether framed as an “alternate
22 pleading” or otherwise—fails as a matter of law because California’s statutory framework
23 provides potential parties with sufficient notice pre-seizure, thus satisfying procedural due-
24 process requirements. This Court should dismiss the fourth cause of action in the complaint.

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28 ² Tuttle’s complaint omits any reference to notice that he may have been provided under section 551.

ARGUMENT

I. BECAUSE THE CHALLENGED CODE SECTIONS ALLOW MARINE DEBRIS TO BE SEIZED ONLY AFTER NOTICE, THEY PROVIDE ADEQUATE PROCEDURAL DUE PROCESS.

Harbors and Navigation Code section 551 states that marine debris may be seized only after notice is attached to the debris and mailed to the vessel owner, if an owner can be identified.³ Courts have found that statutes like section 551 that require such notice imply a right to a hearing and satisfy procedural due-process requirements. By receiving pre-deprivation notice, Tuttle received the process to which he was due without the additional post-deprivation notice that he now demands. Tuttle's fourth cause of action challenging sections 550 and 551 thus fails as a matter of law.

Any inquiry into the constitutionality of a statute must begin with the presumption that the statute is constitutional. *See United States v. National Dairy Prods. Corp.*, 372 U.S. 29, 32 (1963); *United States ex rel. Madden v. General Dynamics Corp.*, 4 F.3d 827, 830 (9th Cir. 1993). And to successfully assert a facial challenge to a statute, the challenging party must "establish that *no* set of circumstances exists under which the [statute] would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987) (emphasis added); *S.D. Myers, Inc. v. City & County of San Francisco*, 253 F.3d 461, 467 (9th Cir. 2001).

When a protectable property interest is subject to seizure by the state, the Fourteenth Amendment's procedural due-process protections arise, although in many instances "the question remains what process is due." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). "To determine what procedures are required, [courts] balance the competing government and private interests." *Scofield v. City of Hillsborough*, 862 F.2d 759, 762, (9th Cir. 1988) (citing *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976), and *Goichman v. Rheuban Motors, Inc.*, 682 F.2d 1320, 1324 (9th Cir. 1982)). Undertaking that balancing of interests requires a court to examine (1) the private interest affected; (2) the risk of an erroneous deprivation of such interest through the procedures used; and

³ Although Tuttle included section 550 in his notice challenging constitutionality, that section sets forth statutory definitions only. As such, it does not and cannot implicate the Fourteenth Amendment and Tuttle's procedural due-process rights.

1 (3) the governmental interests, including the burden that additional procedural safeguards might
2 entail. *Mathews*, 424 U.S. at 335. Apart from considerations inapplicable here, the “balancing
3 test for determining what procedural protections are warranted, given the governmental and
4 private interests involved, is essentially identical to that employed under the federal analysis.”
5 *Ryan v. Cal. Interscholastic Fed’n-San Diego Section*, 94 Cal.App.4th 1048, 1071 (2001) (citing
6 *Mathews* 424 U.S. at 335, 347-49).

7 Both the United States and California Supreme Courts have held that absent an express
8 statutory bar on further proceedings, procedural due process is satisfied when pre-deprivation
9 notice is provided, because such notice impliedly offers the owner of seized property an
10 opportunity to be heard. In *Greene v. McElroy*, 360 U.S. 474 (1959), the government revoked an
11 aeronautical engineer’s security clearance. The Supreme Court held that the government could
12 not, absent authorization from statute or the President, deprive the petitioner of civilian
13 employment by revoking his security clearance without first giving him an opportunity to
14 examine evidence and confront witnesses against him. *Id.* at 508. In so finding, the Supreme
15 Court explained that it was not deciding what procedures were constitutionally compelled, but
16 only that petitioner could not be deprived of certain procedures in the absence of legislation that
17 authorized that deprivation without a hearing. *Id.*

18 Courts have subsequently relied on *Greene* to find that procedural due process is adequately
19 protected by giving pre-deprivation notice, because such notice implies the right to a hearing
20 unless legislative action expressly bars such a hearing. In *Traverso v. People ex rel. Department*
21 *of Transportation*, 6 Cal. 4th 1152 (1994), the California Department of Transportation
22 (CalTrans) rejected an owner’s request to rebuild an outdoor advertisement after the owner had
23 received written notice that such reconstruction would not be allowed under the revised California
24 Outdoor Advertising Act and failed to respond. *Id.* at 1158. The California Supreme Court held
25 that California Business and Professions Code section 5463—which at the time provided for a
26 10-day notice to billboard owners that their advertising was non-conforming—satisfied due-
27 process requirements. *Id.* at 1164.⁴ Citing *Greene*, the Court explained that while due process

28 ⁴ Section 5463 was later amended to provide for a 30-day notice period.

1 requires notice and an opportunity to be heard before property rights may be impaired, a right to
2 be heard was implied in the notice requirement. *Id.* at 1164-65. The Court further explained that
3 absent an express legislative prohibition on hearings following an objection to the notice, the law
4 was constitutional. *Id.* Specifically, the Court found that “[t]he 10-day period [could] serve only
5 one function: to allow the billboard owner sufficient time to investigate and, if appropriate, to
6 contest CalTrans’s determination that a violation has occurred. Nothing in the Act or the
7 regulations indicates that CalTrans would refuse to afford the billboard owner a hearing on
8 request.” *Id.* at 1166; accord, *Lent v. California Coastal Com.*, 62 Cal. App. 5th 812, 840 (2021)
9 (holding that procedural due process requires only “reasonable notice and a reasonable
10 opportunity to be heard”) (citations omitted); see also *Goichman v. Rheuban Motors, Inc.* 682
11 F.2d 1320, 1325 (9th Cir. 1982) (under *Matthews v. Eldridge*, 424 U.S. 319 (1976), a vehicle’s
12 seizure without notice was constitutionally permissible when notice and opportunity to be heard
13 were provided post-seizure).

14 Tuttle’s challenge to Harbors and Navigations Code sections 550 and 551 disregards this
15 precedent. Tuttle alleges that section 550 and 551 “do not require a post-seizure holding period,”
16 thus depriving him “the opportunity to a hearing on the issue of whether or not m/v TRIDENT
17 was marine debris.” (Compl. ¶ 79.) But as discussed above, these statutes do not—except in
18 emergencies—allow governmental agencies to remove and destroy marine debris immediately
19 and without prior notice.⁵ Instead, section 551 permits public agencies to remove vessels deemed
20 to be marine debris only after the agency gives the owner written notice—either by certified or
21 first-class mail or physical posting on the vessel—that the vessel “shall be removed by the public
22 agency if not claimed or removed within 10 days.” Cal. Harb. & Nav. Code, § 551(a)(1)(B). Only
23 when the marine debris “remains in place for 10 days” after the date of that notice can the
24 governmental agency remove the property. Cal. Harb. & Nav. Code § 551(a)(1)(D). As in
25 *Traverso*, that 10-day period serves only one function: to allow owners sufficient time to
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27 ⁵ Marine debris “that constitutes a public nuisance or a danger to navigation, health, safety, or the
28 environment may be removed and disposed of immediately.” Cal. Harb. & Nav. Code § 551(b).
Even then, post-seizure notice must be given. *Id.*

1 investigate and, if appropriate, contest the determination that their vessels are marine debris
2 subject to removal from a State waterway. *See Traverso*, 6 Cal. 4th at 1166-67.

3 Because the 10-day notice period impliedly allowed Tuttle (and similarly situated owners)
4 the opportunity to object to the seizure of his vessel and demand a hearing, and because Harbors
5 and Navigation Code sections 550 and 551 do not prohibit or otherwise impair an owner's ability
6 to request such a hearing, these statutes are constitutionally valid. Tuttle cannot amend to plead
7 around this facial defect in his claim. Tuttle's fourth cause of action should be dismissed.

8 **II. IF INTERVENOR'S MOTION IS NOT GRANTED, THE COURT SHOULD**
9 **ADDRESS ALL NON-CONSTITUTIONAL ISSUES BEFORE ADDRESSING**
10 **THE CONSTITUTIONALITY OF THE CHALLENGED CODE SECTIONS.**

11 As shown above, Tuttle's fourth cause of action fails to state a claim on which relief can be
12 granted and should be dismissed. But to the extent that the Court is not inclined to grant
13 Intervenor's motion immediately, the Court should defer addressing the constitutionality of
14 California's Harbors and Navigation Code sections 550 and 551 until after it first adjudicates all
15 other issues that may resolve the litigation. "[P]rior to reaching any constitutional questions,
16 federal courts must consider nonconstitutional grounds for decision." *Gulf Oil Co. v. Bernard*,
17 452 U.S. 89, 99 (1981); *Meinhold v. U.S. Dep't of Def.*, 34 F.3d 1469, 1474 (9th Cir. 1994) ("[I]f
18 there is one doctrine more deeply rooted than any other in the process of constitutional
19 adjudication, it is that we ought not to pass on questions of constitutionality ... unless such
20 adjudication is unavoidable." (citation omitted)).

21 In cases involving factual and legal allegations similar to those Tuttle makes here,
22 defendants have successfully moved to dismiss several causes of action and parties. *See, e.g.,*
23 *Gollub v. City of Sausalito*, No. 18-cv-07386-VC, 2019 WL 4458788, at *2-4 (N.D. Cal. Sept. 17,
24 2019) (dismissing due-process, conspiracy, maritime "hijacking," and conversion claims). To
25 avoid unnecessary constitutional adjudication, the Court should first allow for and resolve similar
26 allegations here before addressing Tuttle's constitutional challenge to Harbors and Navigation
27 Code sections 550 and 551.
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CONCLUSION

Because Harbors and Navigation Code sections 550 and 551 provide Tuttle and others similarly situated with adequate notice before property is seized, these sections do not run afoul of the Fourteenth Amendment's procedural due-process clause. Accordingly, Plaintiff's fourth cause of action challenging these laws—and any related allegations—should be stricken from the Complaint. To the extent that the Court is not inclined to grant Intervenor's motion immediately, all issues raised in this litigation should be resolved before the Court considers Tuttle's constitutional challenge.⁶

Dated: September 10, 2021

Respectfully Submitted,

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⁶ The California Attorney General's Office acknowledges Anuraj K.C. Shah, Stanford Law School Class of 2022 J.D. Candidate, for his substantial contributions to this brief.

CERTIFICATE OF SERVICE

Case Name: ***Tuttle v. Richardson's Bay
Regional Agency, et al.***

Case No. **3:21-cv-03019-AGT**

I hereby certify that on September 10, 2021, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

- **INTERVENOR CALIFORNIA ATTORNEY GENERAL ROB BONTA'S NOTICE OF MOTION AND MOTION TO DISMISS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on September 10, 2021, at San Francisco, California.

M. Mendiola
Declarant


Signature